IN THE

Supreme Court of the United States

October Term, 1961

No. 6

THEODORE R. GIBSON,

Petitioner,

v.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR PETITIONER

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Opinion Below

The opinion of the Supreme Court of Florida (R. 262) is reported at 126 So. 2d 129.

Jurisdiction

The judgment of the Supreme Court of Florida was entered on December 19, 1960 (R. 262). Application for rehearing was denied on January 17, 1961 (R. 269), but on the same day, in a separate order, execution and enforcement of the judgment was stayed for 60 days to permit petitioner to seek review of this cause here (R. 270). Accordingly, petition for writ of certiorari was filed in this Court on March 20, 1961 and granted on May 8, 1961 (R. 271). Jurisdiction of this Court to review the judgment below rests on Title 28, United States Code, Section 1257(3).

Question Presented

Whether it is a violation of constitutionally guaranteed rights of freedom of association to require petitioner, as custodian of the N.A.A.C.P. membership list, to bring those records to hearings of the respondent committee to authenticate his answers to inquiries concerning membership in the organization of alleged Communists, where the inevitable consequence is the public discrediting of the legitimacy of the N.A.A.C.P. as an organization and of the loyalty of its members, without justification therefor being established in a showing that petitioner or the N.A.A.C.P. is in some way connected with subversion?

Statute Involved

CHAPTER 59-207, LAWS OF FLORIDA, 1959

AN ACT to provide for the creation and appointment of a committee of the Legislature to make investigations of the activities in this state of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida; for the conduct of hearings and the subpoenaing of witnesses; providing for circuit courts to enforce committee's processes; for a report of such committee to the 1961 Legislature; authorizing the employment of specialized assistance by the committee; providing for the expenses of the committee; providing an effective date; and providing for the extension of the joint committee set up by Chapter 57-125, Laws of Florida, 1957, until the committee created by this Act is duly appointed and organized.

WHEREAS, the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956, has expired with the filing of its report to the legislature as provided by said act; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, will expire with the filing of its report to the legislature as provided by said act; and

WHEREAS, the said two committees' records and reports disclose a great abuse of the judicial processes of the Courts in Florida, as well as certain activities on the part of various organizations and individuals which constitute violence or the threat thereof, or violations of the laws of this state and which activities are inimical to the well-being of the majority of the citizens of this state; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, was created to complete the work commenced by the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956; and

WHEREAS, there is in the committee's files and records evidence and sources of evidence disclosing that the Communist party, its fronts and apparatus and other subversive organizations, are seeking to agitate and engender ill-will between the races of this and other states; and

WHEREAS, the joint committee set up by chapter 57-125 has diligently pressed its investigations to determine the exact nature, extent and effect of subversive penetration and influence on the actions of certain organizations and individuals active in Florida; and

WHEREAS, said committee has been prevented from ascertaining the same because of the deliberate and almost unanimous action of the witnesses before it in resorting to litigation to frustrate said committee's investigations, which resulted in said committee being mired down in numerous law suits in the Circuit Courts and the Supreme Court of Florida, all of which litigation has ended in the Supreme Court of Florida having twice upheld the authority of said committee to pursue the investigations it has undertaken, and which litigation has now culminated in the United States Supreme Court having issued a stay order

against said committee on an unsworn and unverified application for stay pending application by certain witnesses subpoenaed before the committee for certiorari in the United States Supreme Court; and

WHEREAS, because of lack of time said proceedings still are lodged undisposed of in the United States Supreme Court with the committee powerless to proceed with its investigations because of that Court's stay order; and

WHEREAS, the issues embraced in said litigation involve fundamental principles of State's rights and State's sovereignty as against centralized Federal power and Government by judicial decree and constitute a fight for State sovereignty which this State can ill afford to abandon; and

WHEREAS, there still exists the same grave and pressing need for such a committee to exist in the interim between the 1959 and 1961 sessions of the legislature of Florida, to continue and complete the above two committees' work, and to participate in and contest the efforts represented by the above referred to litigation to whittle away further at this State's rights and sovereignty, and to be every ready to investigate any agitator who may appear in Florida in the interim.

NOW THEREFORE, the following bill is proposed to be enacted by the legislature because of all the foregoing:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. There is hereby created a special committee of the legislature to be composed of seven (7) members, three (3) of whom shall be appointed from the membership of the state senate by the president, and four (4) of whom

shall be appointed from the membership of the state house of representatives by the speaker. The members of said committee shall serve as such until discharged by the president of the senate and the speaker of the house of representatives upon receipt of their report at the regular 1961 session of the legislature.

Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state.

Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be required; to required by subpoena or otherwise the attendance of such witnesses and the production of such papers, bonds and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond

to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars ($67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

Statement

The instant controversy has a long history. Although the creation of the respondent committee dates from enactment of Chapter 59-207, Laws of Florida, 1959, the investigation in which it is involved and from which this case arises began in 1956. In that year, pursuant to Chapter 34918, Laws of Extraordinary Sessions of Florida, 1956, a committee of the legislature was established to make investigations into the activities of organizations and individuals "advocating violence or a course of conduct which would constitute a violation" of the laws of Florida.

The committee undertook an investigation of the activities of the National Association for the Advancement of Colored People in Florida, on the theory that the organization's consistent efforts to undermine racial discrimination were Communist inspired. A report was filed with the legislature in 1957. Except for the enactment of Chapter 57-125, Laws of Florida, 1957, which created a committee to continue and complete the work of its predecessor, however, no legislation dealing with the infiltration of subversives into legitimate organizations operating in the field of race relations was recommended or adopted at the 1957 session of the Florida legislature.

The 1957 committee, pursuant to its statutory authority, held hearings in Miami and sought to secure physical possession of the membership list of the Miami Branch of the N.A.A.C.P., purportedly in order that the committee could determine the extent of Communist infiltration and influence in the Branch. Disclosure of the names of N.A.A.C.P. members was refused. Counsel for the committee, thereupon, secured a court order requiring that the membership list of the Branch be turned over to the committee. This order was resisted, but before final adjudication at the trial court level, the Supreme Court of Florida granted a stay pending a hearing and determination on the merits.

After hearing, that court upheld Chapter 57-125, Laws of Florida, 1957, as being consistent with constitutional requirements. It concluded that the committee was engaged in a valid legislative purpose in seeking to uncover and determine the extent of Communist infiltration in organizations such as the N.A.A.C.P. On the rationale that the committee's investigation of subversion overbalanced the right to privacy and anonymity in one's associational relationships, the court concluded that *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, was inapposite, and that disclosure of membership in the organization could be required, con-

sistent with constitutional guarantees of freedom of speech and association. Therefore, the court decreed that the custodian of the N.A.A.C.P. membership list could be ordered to bring the list to committee hearings for the purpose of verifying answers to inquiries about membership in the organization of persons designated by the committee at subversive (108 So. 2d 729). Application for writ of certiorari was denied by this Court. 360 U. S. 919.

Before this Court acted, the committee, which had been formed pursuant to Chapter 57-125, Laws of Florida, 1957, was due to expire, and in establishing the instant committee, under Chapter 59-207, Laws of Florida, 1959, the life of the old committee was extended "to enable it to discharge its responsibility" in the litigation then pending in this Court until the appointment and organization of the instant committee had become effective.

In 1959, as in 1957, no remedial legislation dealing with the problem of Communist infiltration into organizations operating in the field of race relations resulted from the committee's investigation. The instant committee, however, was created to press and complete the investigation undertaken by the 1956 and 1957 committees to determine the nature and extent to which petitioner's organization had been subjected to subversive penetration and influence.

The November 4-5, 1959, Hearings in Tallahassee, Florida

On October 30, 1959, petitioner was ordered to appear before the respondent committee on November 4, 1959, in the State Capitol Building at Tallahassee, and to bring the membership records in his possession or of which he was custodian, pertaining to the identity of the members and those making contributions to the local and state N.A.A.C.P. organizations.

At the outset, the Chairman of the respondent committee set forth the scope of the inquiry with which the committee

was concerned. His remarks consisted of a verbatim recital of Chapter 59-207, Laws of Florida, 1959 (R. 8-13), followed by a declaration that the hearing would be concerned with the activities of various organizations operating in Florida in the fields of "race relations . . . coercive reform of social and educational practices and mores by litigation and pressured administrative action . . . labor . . . education . . . and other vital phases of life in this State . . . the Communist Party . . . and Communist-front organizations . . . their aims and objectives . . . and the decree, if any, to which Communists and Communistic influence has [sic] been successful in penetrating, infiltrating, and influencing the various organizations and members thereof which have been, or are now, operating in the above fields" (R. 12-13). The Chairman disassociated the committee from any intent to give the impression that the mere calling a witness to testify signified that the person called was Communist. Each witness was given permission to make a short disclaimer of membership in the Communist Party, if he so desired (R. 13).

Arlington Sands, who, as it developed, was respondent's only witness with personal knowledge of the facts it sought to establish, was not present (R. 6). The first witness bearing on this controversy was R. J. Strickland, employed as an investigator by the committee. He stated that he had conducted investigations concerning the activities of Communists in the South (R. 24); that one Augusta Birnberg was a member of the Communist Party (R. 24); that one Edward Waller had now left the Party, but was once a member, and "stated to me" that he had then been under instructions to infiltrate the N.A.A.C.P., and that he had attended N.A.A.C.P. meetings at an unstated time in Dade County (R. 24); that a James Nimmo, now a resident of New York State, was once a Communist but was no longer associated with the Party (R. 25); that "information indicates" that one Abe Sorkin was a member of the Party and at one

time was a member of the N.A.A.C.P. (R. 25); that one Charles Marks was a member of the Party (R. 25); that "according to information in hand" Myron Marks was a member of the Party (R. 25); that deposit slips showed that Leo Sheiner, a member of the Communist Party, was a contributor to the N.A.A.C.P. (R. 26);[1] that Charles Smolikoff, a former Dade County resident, was a Communist (R. 26); that Tess Kantor, a one-time resident of Miami, was a Communist (R. 26); that Leah Adler Benomovsky, a former resident of Dade County, was a Communist (R. 27); that Louis Popps had once been a member but was no longer believed to be associated with the Party (R. 27); that Emanuel "Manny" Graff and Bobby Graff, once residents of Miami, were members of the Communist Party (R. 27); that Michael Santzek was a member of the Party (R. 27); and that "it is my information" that each of the persons named had been a member or participated in meetings and affairs of the N.A.A.C.P. Then he read a list of 33 persons and stated that some were members of the Communist Party, and that each in the recent past had been active in Communist-front organizations in Dade County (R. 28). Strickland then gave the names of five persons whom he identified as "present and or past" members of the Communist Party (R. 29).

He was then asked to read the legend on the cards of members of the Communist Party describing their rights and duties (R. 29). As read, paragraphs 3 and 4 pledge each member to fight all forms of "discrimination and segregation, and all ideological influences and practices of 'racial' theories . . ." and to "fight for the full social, political and economical equality of the Negro people, for Negro and white unity" (R. 30).

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[1] These deposit slips were never produced either at the committee hearings on November 4, 5, 1959, and July 27, 1960, or at the court hearings on May 30, 1960, and August 30, 1960.

Petitioner's testimony followed. He stated that he was custodian of the membership records of the Miami Branch of the N.A.A.C.P., but that he had not brought those records with him (R. 31); that there were approximately 1,000 members in the Miami Branch (R. 33). He informed the committee that the membership records in his possession were kept for and covered the current year only (R. 31); that membership in the organization was for a 12-month period from the date of joining (R. 32); that at the end of the 12-month period, a person was no longer a member of the N.A.A.C.P., and unless his membership was renewed, his card was removed from the files (R. 32). He testified that he had been President of the Miami Branch and active in the N.A.A.C.P. for the past five years (R. 40).

Petitioner advised the committee that the N.A.A.C.P., beginning with its annual convention in 1950, and each year thereafter had adopted resolutions condemning Communism and excluding from the organization all Communists and members of other subversive organizations. Copies of these resolutions were left with the committee (R. 35).

Petitioner volunteered to cooperate with the committee, by agreeing to answer any questions out of his own personal knowledge concerning membership in the N.A.A.C.P. of any person identified by the committee as subversive, but flatly refused to bring or produce the N.A.A.C.P. membership records at the committee hearings for the purpose of answering any such inquiries (R. 45). Petitioner based this refusal on the grounds that to produce the N.A.A.C.P. membership records at the committee hearings, and to testify from these records would create the same fears, concerns and deterrents to the exercise of rights of freedom of association by members and prospective members of the N.A.A.C.P., which would result from the membership records being physically turned over to the committee (R. 37).

He was asked about 14 people previously identified as members of the Communist Party by Strickland (R. 24-28). He was given the names and shown photographs of these individuals. In each instance petitioner stated that he was unable to identify the person named as associated with the N.A.A.C.P. (R. 39-44). Then he was asked whether he would bring the N.A.A.C.P. membership records to authenticate his testimony concerning membership in the N.A.A.C.P. of the 33 persons described by Strickland as either members of the Communist Party or active in Communist-front organizations. This petitioner refused to do (R. 45). He reiterated his offer to say, if asked, whether he knew these persons to be members of the N.A.A.C.P., but refused to bring the N.A.A.C.P. membership records to the committee hearing for the purpose of such testimony. Shortly thereafter the hearings adjourned.

When the hearings resumed the next day, November 5, the first witness called was Arlington Sands. He stated that he was a member of the N.A.A.C.P., but did not know whether his membership had expired (R. 64). He had been active in the organization prior to 1949, and had been a member off and on for the past ten years (R. 64). He had not been to an N.A.A.C.P. meeting in two years (R. 65). He was then asked about the 14 identified as members of the Communist Party by Strickland. He recognized Santzek (R. 65) and Leah Benomovsky (R. 66), but did not recall seeing them at N.A.A.C.P. meetings. He did not remember Myron Marks as a member of the N.A.A.C.P. (R. 67), and had never seen Marks' father at an N.A.A.C.P. meeting (R.67). He stated that he did not believe that Charles Smolikoff had been an N.A.A.C.P. member because the latter had not thought very highly of the organization (R. 68). Sands asserted that Leo Sheiner had represented the N.A.A.C.P. as an attorney during the period when he had been an official of the Branch, but he did not believe that Sheiner was a Communist (R. 70). He saw

Abe Sorkin at N.A.A.C.P. meetings, but did not know whether he was a member (R. 70). He saw James Nimmo at N.A.A.C.P. meetings (R. 70), but never saw Ed Waller at any (R. 71). He denied having ever told Strickland on the prior Wednesday that he had seen Augusta Birnberg (R. 72), Ed Waller (R. 72), Charles Smolikoff, Leah Benomovsky, Myron Marks (R. 73), or Mike Santzek (R. 73) at N.A.A.C.P. meetings. He did see Leo Sheiner there because he came to an N.A.A.C.P. meeting at Sands' invitation (R. 72).

Strickland was recalled and testified that he had talked to Sands in Miami and that the latter had identified the 14 people in question as members of the Communist Party and of the N.A.A.C.P. (R. 74-75).

Vernell Albury (R. 76-86), Ruth Perry (R. 86-98), and G. E. Graves (R. 98-103), Treasurer, Secretary and Counsel, respectively, of the Miami Branch, were shown photographs of the 14 alleged Communists. They uniformly denied knowing these people as members of the N.A.A.C.P. although in rare instances one or two of them had been seen at N.A.A.C.P. meetings.

Petitioner was then recalled. He explained that a thorough investigation is made of all prospective Branch officers to make certain that no person connected with any subversive group becomes an officer of the organization. He pointed out that no such investigation of each individual member is possible. If, however, it comes to the attention of Branch officials that an individual member is engaged in subversive activities, action is commenced to terminate his membership in the N.A.A.C.P. (R. 105). There had been no expulsions from the Branch during the past five years because of subversive activities (R. 105).

The Court Proceedings

On the basis of petitioner's refusal to produce the N.A.A.C.P. membership records at the committee hearings,

proceedings were instituted in the Circuit Court of Leon County to require him to do so. In his response to the order to show cause issued by that court, petitioner invoked the protection afforded by the Fourteenth Amendment to the Constitution of the United States to the exercise of rights of freedom of association as a justification for his refusal to comply with the state's request.

At the hearing, an attempt was made to introduce testimony showing that the committee had no evidence of Communist infiltration in the N.A.A.C.P. (R. 126); that the committee had no knowledge as to whether the 14 persons identified as Communists were members of the N.A.A.C.P. or the Communist Party (R. 126); that most of the persons had not been residents of Florida for the past five years (R. 126); that Strickland had no personal knowledge as to whether any of the persons identified were members of the Communist Party (R. 222); and that except for Nimmo, Waller and Popps, whom he indicated had left the Party, he had spoken to none of the persons about whom he had testified. The court ruled this evidence out of order, and proffers to that effect were read into the record.

Petitioner presented evidence to show the anti-Communist policy of the N.A.A.C.P. (R. 130); that the organization's officers charged with implementing the anti-Communist resolutions had no knowledge or evidence of any Communist infiltration in the Miami Branch during the past five years (R. 130); that there had been a loss in membership in the N.A.A.C.P. because of fear of reprisals against persons identified as being members of the organization (R. 159-160, 152-153); and incidents of persons publicly known to be affiliated with the N.A.A.C.P. being subjected to threats and other pressures were cited (R. 133, 134, 136, 152, 165, 168).

On July 19, 1960, the trial court held that there were no constitutional barriers to prevent petitioner from being

required to produce the N.A.A.C.P. membership list at committee hearings for the purpose of verifying his testimony in respect to person about whom he might be questioned. Petitioner was ordered to appear before the committee on July 27, 1960 with the N.A.A.C.P. membership records for the purpose of answering committee inquiries (R. 229).

On July 27, 1960, petitioner appeared before the committee as ordered. He again indicated a willingness to testify from his own personal knowledge respecting the N.A.A.C.P. affiliation of any persons alleged by the committee to be subversive, but refused to produce the membership records to verify his answers (R. 235).

On August 15, 1960 an order to show cause as to why petitioner should not be adjudged in contempt was entered by the Circuit Court (R. 253). In response to the rule to show cause (R. 254) and at the hearing thereon on August 30, 1960, petitioner rested his case on the Fourteenth Amendment guarantee of rights of freedom of association.

At the close of the hearing on August 30, 1960, petitioner was adjudged in contempt and sentenced to six months' imprisonment and $1,200 fine, or in default thereof an additional six months' imprisonment (R. 258).

On December 19, 1960, the Supreme Court of Florida affirmed the judgment and conviction of the trial court (R. 262-267). Application was made for rehearing and, in lieu thereof, a stay to enable petitioner to apply for writ of certiorari to this Court (R. 268, 270). On January 17, 1961, application for rehearing was denied, but execution and enforcement of the judgment was stayed to enable petitioner to bring the cause here (R. 270-271).

Summary of Argument

It is now settled constitutional doctrine that the Fourteenth Amendment forbids state interference with freedom of speech and association unless the intrusion can be justified by a subordinating state interest of major proportions. See *Shelton* v. *Tucker*, 364 U. S. 479; *Louisiana* v. *N.A.A.C.P.*, 366 U. S. 293; *Sweezy* v. *New Hampshire*, 354 U. S. 234; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516. A simulated interest does not suffice. See *Sweezy* v. *New Hampshire*, *supra*.

In the instant case, the issue raised is whether petitioner can be required to bring the membership list of the N.A.A.C.P. to hearings of the respondent committee to authenticate his responses to inquiries concerning membership in the organization of persons allegedly subversive. Petitioner has manifested a willingness to answer such questions out of his personal knowledge. He takes the position, however, that to require a check of the organization's membership list to confirm these replies would cast suspicion on the N.A.A.C.P.'s legitimacy as an organization and would fatally discredit the organization without proof of subversive infiltration, thereby accomplishing as effective a deterrent upon the exercise of rights of freedom of association by members and prospective members as if the entire list had been published. Cf. *Sweezy* v. *New Hampshire*, *supra*; *N.A.A.C.P.* v. *Alabama*, *supra*.

Chapter 59-207 of the Laws of Florida, 1959, empowers respondent to "make investigations of the activities . . . of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of the State of Florida." The committee has used this mandate in an attempt to link N.A.A.C.P. activities in Florida with subversion. But without a showing in this record of nexus between the N.A.A.C.P. and petitioner on the one hand, and Communist activities on the other,

there is no foundation upon which interference with freedom of association rights can be based. Therefore, the *ratio decedendi* of *Barenblatt* v. *United States*, 360 U. S. 109; *Braden* v. *United States*, 365 U. S. 431; *Wilkinson* v. *United States*, 365 U. S. 399; and *Uphaus* v. *Wyman*, 360 U. S. 72, is inapposite.

The power of the legislature to investigate is abused when that authority is used for the sake of exposure and for the purpose of investigation as ends in themselves. See *Watkins* v. *United States*, 354 U. S. 178. Such, petitioner contends, is the situation here, and for these reasons the conviction below constitutes an infraction of the due process requirements of the Fourteenth Amendment.

ARGUMENT

Petitioner's Conviction is Proscribed by the Due Process Clause of the Fourteenth Amendment As An Unwarranted Violation of Constitutional Guarantees of Freedom of Association.

The right to determine for oneself which thoughts, sentiments and emotions should be communicated to others dates back to the common law, Warren and Brandeis, "The Right of Privacy," 4 *Harv. L. Rev.* 193, 196 (1890). It is now an unquestionable tenet of constitutional law that the Fourteenth Amendment bars state interference with the exercise of rights of freedom of speech or association, unless such intrusion can be justified by a subordinating societal interest of compelling proportions. See *American Communications Assn.* v. *Douds*, 339 U. S. 382; *Thomas* v. *Collins*, 323 U. S. 516; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *Shelton* v. *Tucker*, 364 U. S. 479; *Louisiana* v. *N.A.A.C.P.*, 366 U. S. 293; cf. *Uphaus* v. *Wyman*, 360 U. S. 72; *Barenblatt* v. *United States*, 360 U. S. 109; *Wilkinson* v. *United States*, 365 U. S. 399;

Braden v. *United States*, 365 U. S. 431; *Communist Party of the United States* v. *Subversives Activities Control Board*, 367 U. S. 1.

The *Alabama* case, in weighing the impact of an enforced disclosure of associational ties on the unfettered exercise of the right of freedom of association in respect to an unpopular, albeit lawful, group activity, held at page 462: "Inviolability of privacy in group association may in many circumstances be indispensable to freedom of association, particularly where a group espouses dissident beliefs."

In *Bates*, application of the same rationale resulted in invalidation of an ordinance requiring the publication of the N.A.A.C.P. membership list, even though there the state sought to justify the enforced disclosure as an incident to the valid exercise of its power to raise revenue.

In *Shelton*, when the state sought to require teachers in all educational institutions supported by public funds to reveal all their associational ties, the statute was declared invalid because in its "unlimited and indiscriminate sweep", it resulted in a broad interference with personal freedom not essential to the accomplishment of a valid governmental purpose.

Finally, in the *Louisiana* case, enforcement of legislation, enacted in 1924 to curb the Ku Klux Klan, so as to require the public identification of membership in an organization not shown to be engaged in lawlessness, was invalidated as an unconstitutional interference with fundamental rights. There this Court enunciated at page 297 a principle particularly in point here:

> At one extreme is criminal conduct which cannot have shelter in the First Amendment. At the other extreme are regulatory measures, which, no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.

This, as was said in that case, marks "the area in which the present controversy lies."

The record here fully documents the contention that public disclosure of the names of members and contributors of the N.A.A.C.P. in Florida results in reprisals of various proportions. Petitioner testified as to a threat to bomb his home (R. 134), and concerning the firing of an Alvin Berkman from his job because of his connection with the N.A.A.C.P. (R. 136). Ruth Perry, Secretary of the Miami Branch, testified that persons called the library where she worked demanding that she be discharged and that she received numerous harassing phone calls at home, after her membership in the N.A.A.C.P. was made public (R. 165). Reverend Lowry testified that after it had been announced in the public press that he was an officer of the state organization, two shots were fired into his bedroom (R. 168). Under these circumstances, the deterrent effect of public disclosure of membership in the N.A.A.C.P. on the exercise of fundamental personal freedoms would seem to have been conclusively demonstrated, and the Supreme Court of Florida so held. *See Graham* v. *Florida Legislative Investigation Committee*, 126 So. 2d 133, 135.

In the *Alabama*, *Bates* and *Louisiana* cases, the question at issue was whether the state could require production of the entire membership list. In the instant case, the question is whether petitioner can be compelled to bring that list to committee hearings for the purpose of answering inquiries propounded to him in respect to the organizational connection of persons identified as subversives by respondent.

This is a mere difference in form and has no bearing on the central issue, which is whether a state may limit or stifle the exercise of rights of freedom of speech and association except to protect a countervailing interest of paramount importance. Cf. *United States* v. *Rumely*, 345 U. S. 41;

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Sweezy v. *New Hampshire*, 354 U. S. 234. As this Court said in *Shelton*, at page 488: "... even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

The asserted justification for the interference with the constitutionally protected freedom of the organization's members condoned below is the state's overbalancing interest in ascertaining the scope of the activities of the Communist Party in Florida. While the substantiality of the state's interest in this regard must be conceded, see *Wilkinson* v. *United States*, supra; *Braden* v. *United States*, supra; *Uphaus* v. *Wyman*, supra, its inquiry cannot be merely an excuse for a broad interference with the exercise of personal liberties by members of dissident or unpopular groups. Cf. *Sweezy* v. *New Hampshire*, supra; *Louisiana* v. *N.A.A.C.P.*, supra. Undoubtedly, a mere assertion that a subordinating interest exists or a mere statement that the committee has "knowledge" that subversives are infiltrating the organization does not constitute justification for intrusion in this area. Cf. *Bates* v. *Little Rock*, supra; *Louisiana* v. *N.A.A.C.P.*, supra.

Barenblatt v. *United States*, *supra*; *Wilkinson* v. *United States*, supra; *Braden* v. *United States*, supra; and *Uphaus* v. *Wyman*, supra, are inapposite. In *Barenblatt*, at page 128, the Court, recognizing "... the close nexus between the Communist Party and the violent overthrow of the government," held that questions to the petitioner concerning his own Communist Party membership were valid and constitutionally permissible.

In *Wilkinson* where the issue raised also concerned petitioner's membership in the Communist Party, the Court pointed out that Wilkinson had not been summoned as a result of an indiscriminate dragnet procedure, lacking in probable cause for belief that he possessed information

that might be helpful to the committee, but that the committee had reason to believe that petitioner was then an active Communist leader. The same situation existed in *Braden* when petitioner had refused to say whether he was a Communist.

In *Uphaus* the Court stated at page 79, that the "nexus between World Fellowship and subversive activities disclosed by the record furnished adequate justification for the investigation we here review." None of these justifying criteria are present in this case.

Moreover, in the above cited cases, where disclosure of the associational tie was upheld, it is clear that the semblance of a valid legislative purpose would not have been sufficient. See *Watkins v. United States*, 354 U. S. 178, 198, 199, where the Court stated:

> We cannot simply assume, however, that every congressional investigation is justified by a public need that overbalances any private rights affected. To do so would abdicate the responsibility placed by the Constitution upon the judiciary to insure that Congress does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty of speech, press, religion or assembly.

Continuing at page 200, the Court added:

> We have no doubt that there is no power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

Where a person is not himself accused of engaging in subversive activities, and where there is no basis for a belief that his group is subversive, this Court has construed the Fourteenth Amendment as proscribing enforced disclosure of the names of members of the organization, when

as a necessary result exercise of personal liberty guaranteed thereunder would be jeopardized. See *Sweezy* v. *New Hampshire, supra; Bates* v. *Little Rock, supra.*

In the instant case, as in *Sweezy* v. *New Hampshire, supra*, the petitioner and the organization to which he belongs deny ever engaging in or advocating subversive activities. On the contrary, it is asserted that they have been actively opposed to Communism and its tenets, and that membership in the N.A.A.C.P. is barred to Communists.

Rev. Gibson indicated that membership runs from year to year, and when not renewed at the end of the year, the individual's name is removed from the files. Thus, inquiries concerning a relationship to the organization, involving the necessity for verification against the membership list, must relate to the current year (R. 32).

A specific investigation is made by the Association clearing all prospective officers of any connection with subversion (R. 105). While it is not possible to do this with members-at-large, Rev. Gibson testified that if the Branch has knowledge of a member engaging in subversive activities, that person would be expelled (R. 105), and that there had been no expulsions in the last five years (R. 104). It might be added that the loyalty of the organization has never been questioned by federal agencies concerned with the menace of Communism to the nation as a whole.

Neither the committee, nor its paid investigator, had any personal knowledge that any of the persons described as subversives were members of the Communist Party or of the N.A.A.C.P.

The only witness who could testify from personal knowledge disputed the investigator's assertions (R. 72 and 73). Moreover, he was obviously testifying concerning matters which predated 1950 (R. 65), so that his testimony could not be related to the present, and he had not been to an N.A.A.C.P. meeting in two years. Further, there was abso-

lutely no proof that any of those named as members of the Communist Party are presently residents of Florida. In short, the record here utterly fails to establish any connection between the N.A.A.C.P. and any subversive group or subversive activities in any degree whatsoever.

Petitioner voluntarily agreed to answer from his own knowledge questions concerning membership in the organization of persons identified as subversive. If, however, he must also produce the membership list and check it to authenticate his responses to these inquiries, grave doubts are cast upon the legitimacy of the organization itself. He thereby, links the organization to Communist activities. Thus, without proof, the organization's disloyal orientation becomes to the public an established fact. The organization is damaged and its effectiveness impaired. Doubts and suspicions about it arise, therefore, which would necessarily adversely affect the organization's ability to attract members and contributors.

The N.A.A.C.P. becomes suspect without proof of subversive infiltration and without any need for publication of the entire membership records. Members who thereafter might be identified in another connection would fear not only reprisals as dissidents, but public vilification as disloyal Americans. Prospective members would fear connection with an organization which had been established in the public's mind as subversive. Nothing in the record creates any basis for thus handicapping the organization, which had been described by the Supreme Court of Florida, see *Graham* v. *Florida Legislative Investigation Committee*, *supra*, at page 136, as "perfectly legitimate but allegedly unpopular in the community." Thus, the rationale which led this Court in the *Alabama*, *Bates* and *Louisianna* cases to hold that a state could not require disclosure of the N.A.A.C.P. membership list applies here, and bars enforcement of an order that petitioner testify from that list, since the deterrent to free exercise of freedom of association would be the same as that condemned in those cases.

Petitioner, and the organization to which he belongs, have views and beliefs respecting the status of Negroes in the society at variance with those of the dominant majority in Florida. These views and beliefs, i.e., that the fundamental law requires that Negroes be accorded equal treatment without distinction because of color, are in keeping with doctrine enunciated by this Court. The fact that petitioner's objectives are distasteful to some does not make them disloyal, or warrant interference with his right and the right of N.A.A.C.P. members in Florida to espouse such dissident beliefs, and to engage in lawful activities to effectuate their views. The record conclusively demonstrates, petitioner submits, that the only real basis for the committee's investigation of the N.A.A.C.P., and its effort to link it with subversion, is the fact that the committee is opposed to the organization's advocacy of desegregation and seeks to use state power to impair the N.A.A.C.P.'s effectiveness. Measured by applicable constitutional standards, the committee's action cannot be sustained. See *N.A.A.C.P.* v. *Alabama; Sweezy* v. *New Hampshire*, supra.

The instant statute creates a committee to "make investigations of the activities of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida . . ." The committee is necessarily limited to carrying out those functions in which the state has an interest—the investigation of subversive organizations advocating violence or a violation of the laws. See *Watkins* v. *United States*, supra, where the Court said, at page 198, referring to *United States* v. *Rumely*:

> The magnitude and complexity of the problem of applying the First Amendment to that case led the Court to construe narrowly the resolution describing the committee's authority. It was concluded that, when the First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter.

The Court continues at p. 206:

> Plainly these committees are restricted to the missions delegated to them, i.e., to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere.

In *Sweezy* v. *New Hampshire*, *supra*, the Court stated, at page 245:

> It is particularly important that the exercise of the power of the compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas . . .

When an investigatory committee exceeds these limits, it is abusing the legislative process and carrying on an activity which is both unauthorized and violative of constitutionally secured freedoms. Cf. *Kilbourn* v. *Thompson*, 103 U. S. 168, 192.

Respondent is attempting to use a valid legislative mandate, viz., authority to investigate organizations advocating violence or violation of the laws, to curb N.A.A.C.P. activities by posing a threat of exposure of the organization's members, and of publicly tainting the organization as being Communist dominated. This constitutes an abuse of the legislative process see, *Watkins* v. *United States*, *supra*, *Kilbourn* v. *Thompson*, *supra*, which, like abuse of the judicial process, is not permissible, *Dean* v. *Kochendorfer*, 237 N. Y. 384, 143 N. E. 229 (1924), *L. B. Price Mercantile Co.* v. *Adams*, 56 Ga. App. 756, 194 S. E. 29 (1937); see also *Tranchina* v. *Arcinas*, 78 Cal. App. 2d 522, 178 P. 2d 65 (1947); *Defnall* v. *Schoen*, 73 Ga. App. 25, 35 S. E. 2d 564 (1945); *Peerless Oil and Gas Co.* v. *Texas*, 138 S. W. 2d 637, aff'd, 138 Tex. 301, 158 S. W. 2d 758 (1940).

Here the committee is in disagreement with the Association's use of the courts and other lawful means to promote desegregation. It attempts to use its legislative mandate to coerce the giving up of the right to associational privacy of members of the N.A.A.C.P. The damage which will result, in terms of the deterrent effect upon the exercise of personal liberty by members and prospective members is amply demonstrated by this record.

In those cases in which interference with the exercise of associational rights and privacy therein has been permitted, not only was a connection to subversion shown, see *Wilkinson* v. *United States, supra; Braden* v. *United States, supra*, but the data gathered was to be used as a basis for legislation.

In *Wilkinson, supra*, the Court points out that the committee resolution authorizing the Atlanta hearing expressly referred to two legislative proposals, an amendment to Section 4 of the Communist Control Act and amendments to the Foreign Agents Registration Act. The Chairman's and the Staff Director's statements contained lengthy discussions of legislation which the committee had under consideration. In the instant case, the only legislation enacted or apparently under consideration was a periodic extension of the committee's life. As Mr. Justice Brennan in dissent pointed out in *Uphaus* v. *Wyman, supra*, at 102, investigation and exposure are not self contained legislative powers in themselves.

If exposure is the purpose, as it seems to be, revelation of membership, rather than leading to legislation, would merely mean that, in the words of Judge Thornal in *Graham* v. *Florida Legislative Investigation Committee, supra*, at page 134, ". . . the N.A.A.C.P. would become completely non-existent in Florida." To permit the legislative process to be used for this purpose and to a discrediting of the organization, without any showing of a nexus between the

Communist Party and the N.A.A.C.P., is constitutionally impermissible, petitioner submits, under the decisions of this Court. See *Sweezy* v. *New Hampshire*; *Uphaus* v. *Wyman*; *United States* v. *Rumely*.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that the judgment below should be reversed.

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